



## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 120

### RIN 3245-AH74

## Temporary 504 Express Loan Authority for Certified Development Companies Participating in the Accredited Lenders Program

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule implements the additional authority that the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act temporarily provides to Certified Development Companies participating in the Accredited Lenders Program with respect to 504 loans that are not more than \$500,000 and that are not made to a borrower in an industry with a high rate of default, as defined by SBA.

**DATES:** *Effective Date:* This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

*Applicability Date:* This rule applies to loan applications submitted to the Certified Development Company on or after [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and approved by the Certified Development Company and the U.S. Small Business Administration through September 30, 2023.

*Comment Date:* Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by RIN 3245-AH74, through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

SBA will post all comments on <http://www.regulations.gov>. If you wish to submit confidential business information (“CBI”) as defined in the User Notice at

<http://www.regulations.gov>, please submit the information via e-mail to

[ALPExpress@sba.gov](mailto:ALPExpress@sba.gov). Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

**FOR FURTHER INFORMATION CONTACT:** Linda Reilly, Chief, 504 Program Branch, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW, Washington, DC 20416; telephone: (202) 604–5032; email: [linda.reilly@sba.gov](mailto:linda.reilly@sba.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background Information**

The 504 Loan Program is an SBA financing program authorized under title V of the Small Business Investment Act of 1958, as amended, 15 U.S.C. 695 *et seq.* The core mission of the 504 Loan Program is to provide long-term financing to small businesses for the purchase or improvement of land, buildings, and major equipment, in an effort to facilitate the creation or retention of jobs and local economic development. Under the 504 Loan Program, loans are made to small business applicants by Certified Development Companies (“CDCs”), which are certified and regulated by SBA to promote economic development within their community. In general, a project in the 504 Loan Program (a “504 Project”) includes: a loan obtained from a private sector lender with a senior lien covering at least 50 percent of the project cost; a loan obtained from a CDC (a “504 Loan”) with a junior lien covering up to 40 percent of the total cost (backed by a 100 percent SBA-guaranteed debenture); and a contribution from the Borrower of at least 10 percent equity.

There are three types of CDCs that participate in the 504 Loan Program. This rulemaking addresses the temporary authority that will be granted, in accordance with section 328(b) of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and

Venues Act (Pub. L. 116–260) (“Economic Aid Act”), to CDCs that are approved by SBA to participate in the Accredited Lenders Program (hereafter “ALP CDCs”).<sup>1</sup>

Currently, ALP CDCs must obtain SBA’s approval to make a 504 loan, including with respect to both the loan’s eligibility and creditworthiness.<sup>2</sup> With respect to closing, ALP CDCs have delegated authority to make the “No Adverse Change” certification prior to loan closing without SBA’s review and approval and are authorized to close 504 loans under the expedited loan closing procedures applicable to a Priority CDC. With respect to servicing, ALP CDCs are currently required to obtain SBA’s approval for most servicing actions.

Section 328(b) of the Economic Aid Act temporarily provides increased authority to ALP CDCs with respect to “covered loans.” The Economic Aid Act defines a “covered loan” as a loan that is not more than \$500,000 and that is not made to a borrower in an industry with a high rate of default as defined by SBA (hereafter referred to as “ALP Express Loans”). Section 328(b) of the Economic Aid Act further requires that SBA annually identify the industries with a high rate of default. Accordingly, on an annual basis, SBA will list the industries that it has determined have a high rate of default in a notice published in the *Federal Register*. ALP CDCs may not use ALP Express Loan authority with respect to any loan made to a business in an industry listed in the *Federal Register* notice as having a high rate of default.

In accordance with section 328(b) of the Economic Aid Act, SBA is delegating to ALP CDCs the authority to make the final decision with respect to the applicant’s creditworthiness on ALP Express Loans. The ALP CDC’s determination regarding creditworthiness will not be subject to SBA review. SBA will continue to be responsible

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<sup>1</sup> The other 2 types of CDCs are the Premier Certified Lenders Program CDCs (PCLP CDCs), which have increased authority to process, service and liquidate 504 loans, and the CDCs that are neither PCLP nor ALP CDCs, which must obtain SBA approval for nearly all loan actions.

<sup>2</sup> ALP CDCs with a record of submitting high quality loan applications may be selected by the Sacramento Loan Processing Center (“SLPC”) to participate in the Abridged Submission Method, which is a streamlined application process.

for reviewing each loan to ensure that it meets all Loan Program Requirements for program eligibility, including but not limited to those requirements involving franchise or similar agreements, historic properties, property with environmental issues, businesses involving religious activities, or businesses with activities of a prurient sexual nature. SBA also is delegating to ALP CDCs the authority to approve certain servicing actions after closing on ALP Express Loans. ALP CDCs must promptly notify the appropriate SBA servicing center of their approval of any servicing action on ALP Express Loans. SBA will consider prompt notification to be within 5 business days of approval.

With respect to the closing process, ALP CDCs, like PCLP CDCs, will be responsible for properly undertaking all actions necessary to close the ALP Express Loan and Debenture in accordance with the expedited loan closing procedures applicable to a Priority CDC and with § 120.960.

In their own discretion, ALP CDCs may decide to not exercise their delegated authority with respect to an ALP Express Loan and may instead submit the loan to SBA under non-delegated procedures. ALP CDCs may not use their ALP Express Loan authority to service a loan that was approved under non-delegated authority that could have been made as an ALP Express Loan. In addition, PCLP CDCs may decide to process an ALP Express Loan under their status as an ALP CDC instead of as a PCLP CDC, thereby not requiring the CDC to comply with Loan Loss Reserve Fund requirements for that loan.

Finally, the authority provided by the Economic Aid Act is available for loan applications submitted to the ALP CDC on or after the effective date of this rulemaking and approved by the Certified Development Company and SBA through September 30, 2023.

Therefore, SBA is issuing this interim final rule to conform its rules with the requirements of the Economic Aid Act by adding a new section to part 120 of its

regulations, § 120.842. The contents of this section are discussed in detail in Section III, below.

## **II. Justification for Publication as Interim Final Rule with Immediate Effective Date**

In general, SBA publishes a rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act (APA) and SBA regulations. 5 U.S.C. 553 and 13 CFR 101.108. In addition to section 303 of the Economic Aid Act that authorizes SBA to issue regulations to implement the amendments described above without regard to notice requirements, the APA also provides an exception to this standard rulemaking process where an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(3)(B). In enacting the good cause exception to standard rulemaking procedures, Congress recognized that emergency situations arise where an agency must issue a rule without public participation. SBA finds that good cause exists to publish this rule as an interim final rule, because there is an urgent need for SBA to implement this temporary program without further delay. Since the Economic Aid Act was enacted in December 2020 (and for many months before), SBA has been required to implement many initiatives related to the pandemic. These initiatives have competed for SBA's limited time and resources, and the implementation of some programs has been unavoidably delayed by those limitations. Any further delay in implementing the ALP Express Loan authority would be contrary to the public interest, as small businesses would have to wait even longer to benefit from the expedited processing provided by this temporary program. By providing an expedited process for certain loans made by ALP CDCs, this program will assist in meeting the ongoing financing needs of small businesses that continue to be impacted by the COVID-19 pandemic.

Although this rule is being published as an interim final rule, comments are hereby solicited from interested members of the public. These comments must be

received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. SBA will consider any comments it receives and the need for making any amendments as a result of the comments.

In addition, the APA requires that “publication or service of a substantive rule shall be made not less than 30 days before its effective date, except \* \* \* as otherwise provided by the agency for good cause found and published with the rule.” 5 U.S.C. 553(d)(3). SBA finds that good cause exists to make this final rule effective the same day it is published in the Federal Register. The purpose of this APA provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. Because of the nature of the changes made by this rule, ALP CDCs and potential loan applicants will not need 30 days after publication of the rule to adjust to the more relaxed procedures. The rule does not change the substantive requirements for obtaining certain 504 loans; delegating increased authority to ALP CDCs with respect to the approval and servicing of those loans only impacts the procedural steps that ALP CDCs are currently required to follow to process a loan. For this and other reasons discussed above, SBA finds there is good cause to make this interim final rule effective immediately instead of imposing a 30-day period between publication and effective date.

### **III. Discussion of new § 120.842**

SBA is adding a new section, 120.842, to implement the authority of ALP CDCs to make ALP Express Loans.

#### Paragraph (a)

Paragraph (a) sets forth the definition of “ALP Express Loan.”

#### Paragraph (b)

Paragraph (b) sets forth the requirements related to the underwriting, approving, closing, and servicing of ALP Express Loans. In conducting such activities, ALP CDCs

must comply with Loan Program Requirements, act in accordance with prudent and commercially reasonable lending standards, and document in its files the basis for each of its decisions.

With respect to underwriting, this provision provides that ALP CDCs are authorized to make the final decision with respect to the applicant's creditworthiness and establishing the terms and conditions of the ALP Express Loan. The ALP CDC's determination regarding creditworthiness will not be subject to SBA review. However, ALP CDCs are reminded that, in accordance with § 120.938, SBA will look to the CDC for the entire amount of the Debenture in the case of fraud, negligence, or misrepresentation by the CDC if the CDC defaults on the Debenture that funded an ALP Express Loan.

SBA will continue to be responsible for reviewing each loan to ensure that it meets all Loan Program Requirements for program eligibility, including but not limited to those requirements involving franchise and similar agreements, historic properties, property with environmental issues, businesses involving religious activities, or businesses with activities of a prurient sexual nature. After approving the creditworthiness of the loan, ALP CDCs will be required to submit to SBA with the loan application all required documentation, including documentation necessary for SBA to make the final eligibility decision. If SBA determines that the applicant and the ALP Express Loan are eligible and that SBA funds are available, SBA will notify the ALP CDC of the loan number assigned to the loan and provide the CDC with a signed copy of the Loan Authorization. ALP CDCs must submit to the Sacramento Loan Processing Center (SLPC) for review and approval any servicing action that the ALP CDC proposes prior to closing that may affect the eligibility of the borrower or the ALP Express Loan.

With respect to closing, the ALP CDC is responsible for properly undertaking all actions necessary to close the ALP Express Loan and Debenture in accordance with the expedited loan closing procedures applicable to a Priority CDC and with § 120.960.

With respect to servicing, the ALP CDC is responsible for servicing its ALP Express Loans in accordance with § 120.970. SBA may in certain circumstances, in its discretion, elect to handle such duties with respect to a particular ALP Express Loan or Loans. Additional servicing requirements are set forth in subpart E of this part. SBA will identify through its Loan Program Requirements which servicing actions that SBA will delegate to the CDC with respect to ALP Express Loans. The CDC must promptly notify the appropriate SBA commercial loan servicing center of any servicing action that it has approved under its delegated authority. SBA will consider prompt notification to be within 5 business days of approval.

Paragraph (c)

Paragraph (c) provides that a CDC is prohibited from processing a loan as an ALP Express Loan if the loan was previously submitted to SBA and was withdrawn by the CDC or was declined or otherwise not approved by SBA.

Paragraph (d)

Paragraph (d) explains that the authority to make ALP Express Loans is available for applications submitted to the ALP CDC on or after the effective date of this rulemaking and approved by the Certified Development Company and SBA through September 30, 2023.

**Compliance with Executive Orders 12866, 12988, 13132, and 13563, the Congressional Review Act, (5 U.S.C. 801-808), Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601-612)**

Executive Orders 12866 and 13563



The Office of Management and Budget (“OMB”) has determined that this rule constitutes a “significant regulatory action” for purposes of Executive Orders 12866, *Regulatory Planning and Review*, and 13563, *Improving Regulation and Regulatory Review*. SBA, however, is proceeding under the emergency provision at Executive Order 12866, section 6(a)(3)(D), based on the need to move expeditiously to mitigate the current conditions arising from the COVID-19 pandemic. This rule is necessary to implement the Economic Aid Act and provide economic relief to small businesses adversely impacted by COVID-19. SBA anticipates that implementing the ALP Express Loan authority and providing ALP CDCs with greater authority to approve and service loans will reduce processing time and therefore benefit small businesses, their employees, and the communities they serve.

#### Congressional Review Act

OMB has determined that this rule is not a major rule under 5 U.S.C. 804(2).

#### Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, *Civil Justice Reform*, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have preemptive effect or retroactive effect.

#### Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132, *Federalism*. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order. As such it does not warrant the preparation of a Federalism Assessment.

#### Paperwork Reduction Act

In order to implement the Act, SBA has determined that it is necessary to temporarily modify SBA Form 1244, which is currently approved under OMB Control Number 3245-0071, *Application for Section 504 Loans*, to conform the application with the revised requirements for ALP Express Loan authority. The changes will not add any new burdens for the respondents. SBA recently updated SBA Form 1244 to account for permanent changes to the Debt Refinancing 504 program, along with technical corrections for the last update to SBA Form 1244. SBA is making the following technical corrections and clarifying changes to SBA Form 1244: (1) revising the instructions on page 1 (*Purpose of the Form*) to clarify that CDCs with ALP Express Loan authority must use the form; (2) adding a new ALP Express checkbox to page 12 in the *Submission Method* field; and (3) updating the instructions on pages 15 and 16 (*Required Exhibits*) to identify which exhibits must be completed and uploaded in SBA's E-Tran system for ALP Express Loans and which exhibits non-ASM CDCs must complete and upload into E-Tran. SBA has obtained emergency approval from OMB for the revised information collection to implement these revisions as expeditiously as possible.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires administrative agencies to consider the effect of their actions on small entities, including small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule, the agency must prepare an analysis that describes whether the impact of the rule will have a significant economic impact on a substantial number of these small entities. However, the RFA requires such analysis only where notice and comment rulemaking is required. As discussed above, SBA is publishing this rule as an interim final rule without advance notice and public comment because section 303 of the Economic Aid Act authorizes SBA to issue regulations to implement the amendments in the Act without

regard to notice requirements. This rule is, therefore, exempt from the RFA requirements.

### **List of Subjects in 13 CFR Part 120**

Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA amends 13 CFR part 120 as follows:

### **PART 120--BUSINESS LOANS**

1. The authority citation for part 120 is revised to read as follows:

**Authority:** 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h) and (m), and note, 636m, 650, 657t, and note, 657u, and note, 687(f), 696(3), and (7), and note, 697, 697a and e, and note; Pub. L. 116-260, 134 Stat. 1182.

2. Add § 120.842 under the undesignated center heading “Accredited Lenders Program (ALP)” to read as follows:

#### **§ 120.842 ALP Express Loans.**

(a) *Definition.* For the purposes of this section, an *ALP Express Loan*:

(1) Means a 504 loan in an amount that is not more than \$500,000; and

(2) Does not include a loan made to a borrower that is in an industry that has a high rate of default, as annually determined by SBA. SBA will publish an annual list of the industries with a high rate of default in a notice in the *Federal Register*.

(b) *Requirements for the underwriting, approving, closing, and servicing of ALP Express Loans—(1) General.* When underwriting, approving, closing, and servicing 504 loans under this section, the ALP CDC must comply with Loan Program Requirements and conduct such activities in accordance with prudent and commercially reasonable lending standards.

(2) *Documentation of decision making.* For each ALP Express Loan, the ALP CDC must document in its files the basis for its decisions with respect to underwriting, approving, closing, and servicing the loan.

(3) *Processing requirements*—(i) *Eligibility*. An ALP Express Loan is subject to SBA’s final approval as to eligibility and, for each loan, an ALP CDC must submit the documents required by SBA to complete the eligibility review. ALP CDCs must submit to SBA for review and approval any servicing action that the ALP CDC proposes prior to closing that may affect the eligibility of the borrower or the ALP Express Loan.

(ii) *Credit decisions*. The ALP CDC is responsible for properly determining the applicant’s creditworthiness and establishing the terms and conditions under which the ALP Express Loan will be made in accordance with SBA’s Loan Program Requirements and prudent lending standards. The ALP CDC’s determination regarding creditworthiness will not be subject to SBA review.

(4) *Submission of loan documents*. An ALP CDC must notify SBA of its credit decision on an ALP Express Loan by submitting to SBA all required documentation. SBA will review these documents to determine whether the applicant and the ALP Express Loan are eligible and whether SBA funds are available for the ALP Express Loan. If approved, SBA will notify the ALP CDC of the loan number assigned to the loan and provide the CDC with a signed copy of the Loan Authorization.

(5) *Loan and Debenture closing*. After receiving notification of the loan number and a signed copy of the Loan Authorization from SBA, the ALP CDC is responsible for properly undertaking all actions necessary to close the ALP Express Loan and Debenture in accordance with the expedited loan closing procedures applicable to a Priority CDC and with § 120.960.

(6) *Servicing*. The ALP CDC is responsible for servicing its ALP Express Loans in accordance with § 120.970. SBA may in certain circumstances, in its discretion, elect to handle such duties with respect to a particular ALP Express Loan or Loans. Additional servicing requirements are set forth in subpart E of this part. The CDC must promptly

notify SBA when it approves any servicing action delegated to the CDC under Loan Program Requirements.

(c) *Prohibition against making a 504 loan previously submitted to the SBA.* An ALP CDC may not process a 504 loan application under paragraph (b)(3) of this section from an applicant whose application was previously submitted to SBA and was withdrawn by the CDC or was declined or otherwise not approved by SBA.

(d) *Applicability.* The authority to make ALP Express Loans is available for applications submitted to the ALP CDC on or after [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and approved through September 30, 2023.

Isabella Casillas Guzman,  
*Administrator.*

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